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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

THE PEOPLE,

Plaintiff and Respondent,

v.

DAVID L. MANNING,

Defendant and Appellant.

D057339

(Super. Ct. No. SCD222356)

APPEAL from a judgment of the Superior Court of San Diego County,
Theodore M. Weathers, Judge. Affirmed.

David L. Manning entered guilty pleas to one count of stalking (Pen. Code,¹ § 646.9, subd. (a)) and one count of making criminal threats (§ 422). The trial court denied Manning's request for probation and sentenced him to the low term of 16 months for stalking as well as a concurrent 16-month term for the criminal threats count.

Manning appeals, contending the trial court's decision to deny his request for probation resulted in a fundamentally unfair sentence and was thus an abuse of discretion.

¹ All further statutory references are to the Penal Code unless otherwise specified.

We find the trial court acted well within its broad sentencing discretion and therefore affirm the judgment.

STATEMENT OF FACTS

Manning and J.F., the victim in this case, first met while they were both undergoing treatment for mental health issues at a facility in Orange County. When J.F. was released from the facility in early 2009, she disappeared for a week. Manning helped locate J.F. and assisted in getting her back to San Diego. J.F.'s father paid for Manning's bus ticket back to Central California.

Beginning in early August 2009, Manning made a series of threatening phone calls and sent abusive e-mails to J.F. and her father. Manning made a number of threats to harm J.F, her father and her mother. Manning's threats were reported to police and he was arrested in October 2009.

DISCUSSION

It is undisputed that Manning suffers from serious mental illness. At the time of Manning's plea, the court promised to consider probation, but if probation was denied the court agreed to a "lid" of 16 months in prison. When the matter came on for sentencing the probation officer recommended that probation be denied. The probation officer's recommendation and the trial court's decision to deny probation were based on two basic concerns: (1) That Manning would not likely comply with the requirement for regularly taking his medication unless he was in a structured setting and would thus pose a risk of danger, and (2) that Manning should not be on probation in San Diego in light of the risk he posed to the victims.

Manning contends the court unfairly denied probation because Manning lacked the funds to obtain a residential placement outside San Diego County and was thus imprisoned because of his poverty. We believe the trial court properly exercised its discretion in selecting the best sentencing alternative to both address the safety issues and the need to provide a mechanism for supervision of Manning outside of San Diego County.

Trial courts enjoy very broad discretion in making sentencing decisions. The trial court is in the best position to consider those options which are most appropriate to the needs of society for reasonable safety and the legitimate need to address supervision of the defendant. Sentencing decisions will not be overturned on appeal unless there is a clear showing that the trial court abused its discretion. (*People v. Superior Court (Du)* (1992) 5 Cal.App.4th 822, 831; *People v. Giminez* (1975) 14 Cal.3d 68, 72; *People v. Cazares* (1987) 190 Cal.App.3d 833, 837.) The proper exercise of discretion requires the court to fully consider all of the appropriate options in making its decision. (*People v. Carmony* (2004) 33 Cal.4th 367, 378.)

The trial court and the probation officer were legitimately concerned with Manning's history of failing to take his medication. During those episodes, conduct like that which took place in this case is much more likely to occur. The court was also aware that Manning had a history of alcohol abuse. Finally, it was also clear that Manning should not be supervised on probation in San Diego County because of his fixation on the victims here and the potential for further criminal behavior.

The parties were also aware that given the custody credits Manning had accumulated as of the time of sentencing that he would not likely spend much time in actual custody in prison. The court expressed the view, however, that Manning could receive some treatment in prison and that he could be supervised on parole outside of San Diego County. At the end of the sentencing, the trial court recommended that Manning receive mental health treatment in prison and that he be paroled to a different county.

The decision to deny probation was not one based on Manning's poverty. Certainly defense counsel went to extraordinary lengths to try to find a residential treatment facility for Manning in a different county. She was not successful because there was no funding available to pay for such treatment in those counties. Whether finding a facility elsewhere would have caused the trial court to reach a different decision is entirely speculative. The facts before the trial court simply left the court with limited options to either place Manning somewhere in the county where the victims lived and exacerbate the risks of his reoffending or select imprisonment for a relatively short term and hopefully gain adequate supervision for Manning in a location where he will not impose an unnecessary risk to others. The court made a reasoned decision to select the low-term prison sentence and clearly articulated the reasons for its decision.

Unfortunately, it is often the case that limited resources in the criminal justice system limit the choices available to the trial courts in fashioning appropriate sentences. Here the trial court did not punish Manning for his "poverty." Rather, it made a reasonable effort to select a sentence that did not unfairly confine Manning for a

prolonged period and provided some opportunity for meaningful supervision of Manning on parole, and away from the victims in this case. The court did not abuse its discretion.

DISPOSITION

The judgment is affirmed.

HUFFMAN, Acting P. J.

WE CONCUR:

AARON, J.

IRION, J.